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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/634,108

08/04/2003

Volkhard Lindner

053639-5006-02

6386

23973

7590

05/04/2006

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EXAMINER

HADDAD, MAHER M

ART UNIT

PAPER NUMBER

1644

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,108

Applicant(s)

LINDNER ET AL.

Examiner

Maher M. Haddad

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21,37,38,40,43 and 44 is/are pending in the application.
- 4a) Of the above claim(s) 38,40 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21,37 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Attachment.

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RESPONSE TO APPLICANT'S AMENDMENT

1. Applicant's amendment, filed 2/27/06, is acknowledged.
2. Claims 21, 37-38, 40 and 43-44 are pending.
3. Claims 38, 40 and 44 stand withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b) as being drawn to nonelected inventions.
4. Claims 21, 37 and 43 are under examination as they read on an isolated polypeptide of SEQ ID NO:4.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e1) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

35 U.S.C. § 102(e), as revised by the AIPA and H.R. 2215, applies to all qualifying references, except when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. For such patents, the prior art date is determined under 35 U.S.C. § 102(e) as it existed prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

6. Claim 21, 37 and 43 are rejected under 35 U.S.C. 102(e) as being anticipated by US20040146862 A1.

The '862 publication teaches BCN4 protein sequence consisting of claimed SEQ ID NO: 4 (see page 52, under BCN 4 protein sequence and the attached sequence alignment in particular). Further, the '862 publication teaches breast cancer polypeptides of the present invention may also be modified in a way to form chimeric molecules comprising a breast cancer polypeptide fused to another, heterologous polypeptide or amino acid sequence (see paragraph 190 in particular). Various tag polypeptides are well known in the art. Examples include HIS6, c-myc tag and Flag-peptide (see paragraph 191 in particular). Finally, the '862 publication teaches a composition comprises a breast cancer modulating protein, preferably encoded by a nucleic acid of Table 1 and a pharmaceutically acceptable carrier (see paragraphs 51-52 in particular).

The reference teachings anticipate the claimed invention.

7. No claim is allowed.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maher Haddad whose telephone number is (571) 272-0845. The examiner can normally be reached Monday through Friday from 7:30 am to 4:00 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 25, 2006



Maher Haddad, Ph.D.
Patent Examiner